IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 12TH JANUARY 2007 / 22ND PAUSHA 1928

Crl.MC.No. 3737 of 2006()

CRRP.14/2006 of III ADDL.SESSIONS COURT, ERNAKULAM
CC.513/1995 of CHIEF JUDL.MAGISTRATE, ERNAKULAM
(CRMP. 8148 /1998)

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PETITIONER/REVISION PETITIONER/RESPONDENT 1/ACCUSED1:

K.G.PREMSHANKAR, THE SUPDT. OF POLICE,
KANNUR, NOW ADDL.DIRECTOR GENERAL OF POLICE,
THIRUVANANTHAPURAM.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.SOJAN MICHEAL

RESPONDENTS/PETITIONER/COMPLAINANT:

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1. INSPECTOR OF POLICE,
SPECIAL POLICE ESTABLISHMENT, CENTRAL
BUREAU OF INVESTIGATION (CBI), KOCHI-17.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
PUBLIC PROSECUTOR SRI.THOMAS JOHN

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/01/2007, ALONG WITH CRMC NO. 3708 OF 2006 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.Nos.3708 of 2006 & 3737 of 2006

Dated this the 12th day of January 2007

O R D E R

Those who want lessons on how a criminal trial can be protracted can have no better school on that aspect and they must visit the facts of this case. In the course of arguments before the learned Sessions Judge whose order passed in revision is challenged in these criminal miscellaneous cases, it was reported that a national agency from North India has forwarded a request to the Public Prosecutor for perusal of the records in this case for enabling them to conduct a research as to how a criminal trial can be deleted. This case can certainly claim that dubious distinction of offering lessons in the attempt for protraction of criminal proceedings.

2. This decision must be read in continuation of the order passed by the learned Magistrate and the fairly elaborate and detailed order passed by the learned Sessions Judge in revision. The challenge is raised against the decision of the learned Magistrate that the delay in filing the final report by the C.B.I can be condoned, which decision was endorsed by the learned Sessions Judge in the impugned revisional order.

3. A synoptic resume of the sequence of events in this case can be attempted at the very outset. The alleged incident took place on 12-2-1988. One Maniyeri Madhavan a journalist was allegedly assaulted by the police officials who took him into custody in connection with another crime-allegedly a false and vexatious one. It was alleged that such high handed action was taken at the instance of a serious police official who had an axe to grind against him. On the allegations raised by the said Madhavan a crime was registered by the local police. Dissatisfied with the investigation he had come before this Court. Later he was constrained to approach the Supreme Court. Very senior officers of the Kerala Police were initially directed to conduct the investigation. The Supreme Court ultimately came to the conclusion that there was no proper investigation conducted by the officials of the Kerala Police and they were only colluding with the accused to thwart a proper investigation. It is unnecessary to advert to the details . But ultimately by the order dated 22-9-1993 which is reported in Maniyeri Madhavan Vs Sub-Inspector of Police and others [1994 (1) SCC 536] the C.B.I. was directed by the Supreme Court to conduct the investigation.

4. From 22-9-1993 to 26-10-1993 the C.B.I. took time to get a copy of the order and to continue with the investigation. From 26-10-1993 to 1-3-1995 time was allegedly taken up by the C.B.I. team for obtaining sanction for prosecution of the accused as also for obtaining clarification from the Central Government. The charge sheet was filed on 27-4-1995. Cognizance was taken. Objections were raised against that cognizance which has been taken ignoring and violating the provisions relating to the limitation in Chapter 36 of the Code of Criminal Procedure. The learned Chief Judicial Magistrate rejected the said objections. There was a revision petition filed against the said rejection before the special judge of the C.B.I. Court and that court by order dated 20-11-1995 set aside the cognizance taken and directed the learned Chief Judicial Magistrate to consider the matter afresh giving the C.B.I the option/liberty to file a fresh application for condonation of delay. There was also a direction that the parties must appear before the learned Chief Judicial Magistrate on 11-12-1995. That order of the revisional court was challenged and by order dated 11-6-1998 reported in Premshankar Vs.Central Bureau of Investigation [1998 (2) KLT 103] the challenge was turned

down.

5. Thereafter on 20-7-1998 the C.B.I filed the present application for condonation of the delay in filing the chargesheet on 27-4-1995.

6. The decision in Premshankar Vs.Central Bureau of Investigation [1998 (2) KLT 103] was challenged before the Supreme Court and the Supreme Court by the decision dated 12-9-2002 reported in K.G.Premshankar Vs.Inspector of Police and Another [2002 (8) SCC 87] rejected the challenge and directed the C.J.M. to proceed further.

7. Even thereafter an original petition and writ petition were filed by the accused to quash the proceedings as O.P. 23400/2002 and W.P.C 27289/2003. Those petitions were disposed of by the common order dated 24-8-2004. A learned Single Judge of this Court quashed the proceedings against the accused persons.

8. That decision was challenged by the C.B.I and by order dated 30-11-2004 which is reported in C.B.I Vs Premshankar [2005 (1) KLT 343] a Division Bench of this Court set aside the judgment of the learned single judge. Thereafter the learned C.J.M. proceeded to consider the application for

condonation of delay and it is thereafter that the impugned order was passed by the learned Chief Judicial Magistrate condoning the delay.

9. The order condoning the delay was challenged before the the Learned Sessions Judge (Special Judge for C.B.I cases) and by the impugned order in Crl.R.P dated 30-9-2006 the learned Special judge upheld the order of the learned C.J.M. A second revision petition is not maintainable and that obviously is the reason why these petitions have come with the label of Crl.M.Cs under section 482 of the Cr.P.C

10. The incident having taken place on 12-2-1988 following the mandate of section 468 (2) (c), cognizance must have been taken within three years- on or before 11-2-1991. The complaint was filed on 27-4-1995. The period from 12-2-1988 to 27-4-1995 has hence got explained.

11. There can be no serious dispute regarding the direction to condone delay till 22-9-1993. That was the date on which the Supreme Court rendered the decision reported in Maniyeri Madhavan Vs.Sub-inspector of Police and others [1994 (1) KLT SCC 536]. Whatever happened till that day was taken note of the Supreme Court and the C.B.I. was directed to

continue with the investigation.

12. From 22-9-1993 to 26-10-1993 is the time allegedly taken for getting copies and to continue the investigation. From 26-10-1993 to 1-3-1995 is the time taken for getting the sanction The C.B.I. contends that it cannot be reckoned as delay as the said period is liable to be excluded under Section 470 (3) of the Cr.P.C The details will be considered later. From 1-3-1995 to 27-4-1995 according to the C.B.I. is the time taken for finalising the chargsheet and filing the same.

13. The learned counsel for the petitioners further submit that at any rate there is absolutely no justification for the delay in filing the application for condonation of the delay. That application was filed only on 20-7-1980. The counsel for the petitioners contends that the delay from 11-12-1995 to 20-7-1998 is not explained at all. That reveals abuse of due diligence and bonafides on the part of the C.B.I. That delay in filing the petition for condonation of delay must persuade the Court to reject the plea for condonation, submits the learned counsel for the petitioners. The learned standing counsel for C.B.I in turn contends that the same cannot be reckoned as delay at all. Limitation has to be considered as on the date of filing

the final report and not as on the date of cognizance or as on the date of filing of the petition for condonation of delay.

14. I shall now proceed to consider the contentions raised.

15. The period of time between the incident proper and the date of filing of the complaint can be divided into three definite and distinct parts. The first is the period from 12/2/1988, the date of the offence to 22/09/1993 when the Supreme Court, frustrated by the inadequate investigation by the local police, finally directed the C.B.I to conduct the investigation and file a final report. The courts below have concurrently come to the conclusion that this period deserves to be condoned. The learned counsel for the petitioners contends that the mere fact that the Supreme Court had directed the C.B.I to conduct the investigation is no reason to mechanically condone the said delay.

16. Under Section 473 Cr.P.C, notwithstanding anything contained in Chapter 36 of Cr.P.C, the court is competent to take cognizance notwithstanding the expiry of the period of limitation if it is satisfied in the facts and circumstances of this case that the delay has been properly explained or that it is necessary so

to do in the interests of justice. The sequence of events during this period 12/2/1988 to 22/09/1993 clearly shows that inspite of the defacto complainant Maniyeri Madhavan running from pillar to post and knocking at the doors of the courts of law, he did not get justice until finally the Supreme Court passed the order on 22/09/1993. The said period of alleged delay, I am satisfied, would not be attributable to any fault on the part of the defacto complainant or the person or the agency who had filed the final report. The Supreme Court was constrained to pass that final order dated 22/09/1993 to the C.B.I to conduct the investigation after the very active efforts made by various courts including the Supreme Court till then bore no fruit. It was thus that the said directions to the C.B.I was issued on 22/09/1993. The period of delay from 12/2/1988 to 22/09/1993 can in these circumstances be safely condoned. The concurrent view taken by both courts on that aspect of the matter does not, at any rate, warrant interference.

17. The next segment of the delay is from 22/09/1993 to 01/03/1995. It took some time for the C.B.I to get the copy of the order dated 22/09/1993. Any person acquainted with the judicial proceedings and procedures adopted by the court would know

and readily accept that some time will be taken by the parties to get copies of the judgment. According to the C.B.I, from 22/09/1993 to 26/10/1993, time was taken to get the copy and from 26/10/1993 to 01/03/1995, time was taken for completing the investigation and to obtain sanction for prosecution of the accused. Initially sanction was obtained but certain clarifications were required and it was in these circumstances that ultimately all the requisite formalities of investigation including obtaining of sanction was completed by 01/03/1995. It would be myopic and unrealistic for this court to assume that the CBI could have resorted to the requisite steps on 22/09/1993 when the order was passed by the Supreme Court. It would be unrealistic for this court to insist that the CBI should explain to this court every minute, hour and day between 22/9/1993 to 26/10/93. The explanation that time was taken up from 22/9/1993 to 26/10/1993 for the CBI to get copy of the order and complete the investigation commends itself for acceptance on broad probabilities and undisputed facts.

18. The records clearly show that request for sanction was made initially on 26/10/1993 and sanction was finally obtained only on 01/03/1995. This period cannot be reckoned as

delay and is liable to be excluded under Section 470(3). It is contended that there can be no mechanical condonation of the delay for the period 26/10/1993 to 01/03/1995 - the period between the date of the initial request for sanction and the date on which the sanction was finally obtained. Due and diligent pursuit by the investigating agency must also be shown, it is submitted. The sanction order makes it clear that the initial request for sanction was made on 26/10/1993 and the final sanction, after clarification, was obtained on 01/03/1995. In these circumstances, I am of the opinion that the said gap of time and the delay can be excluded and condoned. The learned counsel for the petitioner contends that a detailed affidavit explaining each day of delay and the sequence of events during this period has not been filed by the C.B.I but that alleged inadequacy, according to me, cannot stand in the way of the delay being condoned. If there is any contumacious responsibility for the Investigating Agency for such gap of time that can certainly be considered. But in this case, no such contumacious lethargy on the part of the CBI is pointed out or perceived by me. That period i.e. 26/10/93 to 01/03/95 is hence no delay and the same is hence liable to be excluded and

condoned.

19. The third segment of the delay is from 01/03/1995 to 27/04/1995. The charge sheet was filed only on 27/04/1995. From 01/03/1995, the date on which the sanction orders with clarifications were finally secured to 27/4/1995, the date of filing the charge sheet, the C.B.I claims that time was taken to finalise the charge sheet and file the same before the court. It is contended that the C.B.I's request for condonation of the delay during this period is not justified. At any rate, I am satisfied that this court cannot be persuaded to invoke its powers under Section 482 Cr.P.C to interfere with the concurrent decision of the court below to condone that delay.

20. On 27/4/1995 when the charge sheet was filed, it was not accompanied by any application for condonation of delay. Obviously, that requirement was overlooked. The learned Magistrate took cognizance even without an application for condonation of delay. The accused, by filing an application, raised objections against the cognizance taken and the C.B.I opposed the said application at that point of time. The learned Magistrate had considered whether there is delay and the cognizance could be taken notwithstanding the delay though a

formal application for condonation of delay was not filed along with the charge sheet on 27/4/1995. The learned Magistrate held that cognizance taken need not be disturbed. However, the revisional court took the view that such cognizance taken was bad and set aside the order and directed the learned Magistrate to consider the taking of cognizance afresh, giving the C.B.I an opportunity to file an application for condonation of delay. The said application for condonation of delay was, of course, filed only on 20/07/1998. It is contended that the gap of time between 27/4/1995 to 20/7/1998 has also not been explained by the C.B.I.

21. It is not really necessary for me to consider whether the gap of time from 27/4/1995 to 20/7/1998 – the alleged delay during that period deserves to be condoned. The question of delay has to be considered with reference to the date on which the final report is filed and not with reference to the date on which cognizance is taken. The law on this aspect is well settled in Zain Sait v. Intex-Painter, Interior Decorators [1993(1) KLT 532] and the various subsequent decisions on the point. The investigating agency can only file the complaint and the cognizance to be taken is by the court. The gap of time between the filing of the report/complaint and the cognizance being taken

by the learned Magistrate, cannot certainly be reckoned as delay in filing the final report/complaint. In that view of the matter, the gap of time between 27/4/1995 to 20/7/1998 cannot certainly be construed as delay in filing the complaint/final report. Therefore, the C.B.I is strictly not bound to explain that period of time. That period cannot certainly be reckoned as delay in the filing of the complaint.

22. The learned counsel for the petitioners submits that even if that be not reckoned as delay proper, the conduct of the C.B.I not filing the application for condonation of delay [which they ought to have filed along with the final report on 27/4/1995 and which they did not file inspite of the order of the revisional court on 20/1/1995] till 20/7/1998 must be reckoned as having a reflection on the bona fides of the C.B.I, when this court considers the acceptability of the cause shown for the delay from 12/2/1988 to 27/4/1995.

23. I have already narrated the sequence of events that occurred after the revisional court passed the order on 20/1/1995 and the C.B.I filed the application for condonation of delay on 20/7/1998. The sequence of events must suggest eminently that there was no delay or want of bonafides on the

part of the C.B.I in filing the application for condonation of delay. The order passed by the revisional court on 20/11/1995 which gave the C.B.I the option to appear before the learned Magistrate and file the application for condonation on 11/12/1995 was the subject matter of proceedings before this court and the Supreme Court and in these circumstances, the delay from 20/11/1995 (or 11/12/1995) till 20/07/1998 cannot be held to be an indication of want of bona fides or seriousness on the part of the C.B.I to prosecute the complainant. That cannot, at any rate, affect the prayer of the C.B.I to condone the delay from 12/2/88 to 27/4/95.

24. The learned counsel for the petitioners submits that the learned Magistrate had not considered the question in the proper perspective. It is pointed out that though cognizance taken was set aside by the revisional court, the learned Magistrate proceeded as though cognizance had already been taken and only considered whether the delay in the cognizance already taken could be condoned or not. The learned counsel points out that the number assigned to the case when cognizance was taken initially was not altered and the same continues. Even now the case is known or referred to by the number assigned at

the time of initial cognizance which was set aside by the revisional court. The error in approach may be taken note, of it is submitted.

25. I am of the opinion that the number assigned cannot be held to clinch the issue. The fact remains that the final report was filed on 27/4/1995 and the C.B.I has to explain the gap of time from 12/2/1988 to 27/4/1995. Whatever be the number assigned, the learned Magistrate and the court of revision have considered the question whether this gap of time / delay from 12/2/1988 to 27/4/1995 can be condoned. The mere fact that the learned Magistrate did not follow the ideal procedure of assigning the number to the cases, only after condonation of delay is, according to me, one of procedural propriety and not certainly one which affects the core of the decision taken that the delay is liable to be condoned. Ideally the learned Chief Judicial Magistrate must have recorded that the cognizance taken earlier in C.C.No.513/1995 has come to an end and cognizance was taken afresh on the final report filed on 27/4/1995 long later in 2006 when the impugned order dated 27/3/2006 was passed by the learned Chief Judicial Magistrate. That innocuous and innocent inadequacy/procedural impropriety

does not at all persuade me to take any decision against the C.B.I.

26. The learned Standing Counsel for the C.B.I wants this court to take particular note of the sequence of events that took place after the revisional court passed the order dated 20/11/1995 till 20/7/1998. When the application for condonation was filed and even thereafter – of the accused persons bringing the matter to various other and this court (single judge) once setting aside the cognizance and the Division Bench later reversing it. I have adverted to these aspects in the synoptic resume of events given already.

27. The learned counsel for the petitioners submits that the Supreme Court had no occasion when it passed the order dated 22/9/1993 to consider the question of condonation of delay. At that time, different and graver offences were alleged also, submits the learned counsel. I am not reckoning the order dated 22/9/1993 of the Supreme Court as one holding that the delay till that date can be condoned. I only look at that order passed by the Supreme Court dated 22/9/1993 to satisfy myself of the travails of the defacto complainant, who was moving on heaven and earth from 12/2/1998 to get his grievance remedied.

He achieved success only on 22/09/1993. The accused persons were influential officials of the higher levels of the police and in these circumstances, the fact that, despite earlier orders of this court and the Supreme Court, proper investigation was delayed - till ultimately the order dated 22/9/1993 was passed by the Supreme Court, cannot deliver any advantage to the accused. It is only in that context that I have referred to the order dated 22/09/1993 passed by the Supreme Court and proceeded to take the view that the gap of time between 12/2/1988 and 22/09/1993 deserves to be condoned.

28. No other contentions are raised. Of course, precedents have been cited before me - and I do not it find necessary to make specific reference to then, about the right of speedy trial of the accused under Article 21 as also the difficulties which the accused persons may have to face if they are called upon to face the trial now. Substantial portion of the delay, I note, was on account of the acts of the accused persons and their grievances about the denial of the right to speedy trial does not, in the least, impress me.

29. In any view of the matter, I am satisfied that the powers under Section 482 Cr.P.C which are to be invoked only

sparingly and in exceptional cases in aid of justice do not deserve to be invoked to interfere with the impugned concurrent orders of the courts below condoning the delay in taking cognizance. The impugned orders eminently cater to the interests of justice. No failure/miscarriage of justice results from the impugned orders. They send out the message that law and justice will ultimately triumph and the attempts at procrastination cannot finally succeed.

30. These criminal miscellaneous cases are in these circumstances dismissed. I am of the opinion that unless a specific direction for expeditious trial is issued by this court, it will be abdication of the responsibilities. I do, in these circumstances, direct the learned Chief Judicial Magistrate to hold day to day trials and ensure expeditious disposal of C.C.No.513/1995 – at any rate, within a period of six months from the date on which copy of this order is placed before the learned Magistrate.

Communicate this order to the learned Chief Judicial Magistrate forthwith.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006